



Inside This Issue

From the Director's Desk

Property Tax Reduction for Disabled Veterans

Real Estate News from Around the Country

SDREC Welcomes New Legal Counsel

Personal Corporations/LLCs to be Registered with the Commission Office

New Twist on Mortgage Fraud

Recent Court Decisions

New Licensees

Appraiser's Update

South Dakota Real Estate Commission Holds Public Hearing on Proposed Rules

The SDREC recently held a public hearing on administrative rules proposed to reflect changes in law that will take effect on July 1, 2009. The new administrative rules address the following areas :

- New broker associate prelicense education
- Postlicensing education requirements for new broker associates
- Reporting requirements for nonresident licensees
- Electronic filing of complaints and responses
- Inclusion of a broker in the registration process for a business corporation or LLC

Some of the rule changes were to clarify existing language and eliminate unnecessary requirements. The approved rules will be submitted to the Interim Rules Committee. Upon its approval, they will take effect on July 1.

The June/July edition of the Real Estate View will provide a detailed description of the rule changes and their impacts on licensees.

Save the Date 2009 Fall Caravan

Tentative dates for the Fall Caravan have been scheduled as follows:

Wednesday, September 9 – Pierre
Thursday, September 10 – Rapid City
Friday, September 11 – Spearfish
Monday, September 28 – Aberdeen
Tuesday, September 29 – Watertown
Wednesday, September 30 – Sioux Falls
Thursday, October 1 – Sioux Falls

Watch for registration information in the next newsletter!



From the Directors Desk

The 84th Legislative Session has now passed with new legislation passing that affects the Real Estate Licensing Act. As a result of this legislation, the Commission has been busy with the rule-making process. At its last meeting, the Commission held a rules hearing for public meeting. Having the support of all in attendance, these proposed rules will be forwarded to the Interim Rules Committee for its review.

The Commission's legal representation is now in the able hands of Lindsey Riter-Rapp and Robert Riter. Both are very capable of providing the legal expertise needed to assist the Commission in carrying out its mission. For further information on the Commission's new legal counsel, please read their biographies that appear elsewhere in this newsletter.

I recently returned from a meeting of the Association of Real Estate License Law Officials. One of the most interesting seminars I attended was a presentation from ARELLO's newest member, Real Estate Regulatory Agency of the Arab Emirate of Dubai. Dubai joins several countries from around the world who are members of ARELLO; therefore, when attending these meetings, one realizes how global the real estate industry has become.

If you are a responsible broker or property manager, I'd like to remind you of that responsibility when it comes to trust accounting. If you delegate staff to carry out this task, when was the last time you actually reviewed the work being performed? Ultimately, it is your duty to make certain that all trust accounts are in order and balanced on a monthly basis. Trust account guidelines are available on the Commission's website and should be read and utilized by any individual involved with an office's trust account(s). If you have any question about trust account requirements, please contact

Commission staff. Also, if any discrepancies are discovered, these must be reported to the Commission staff immediately.

Another issue to be reminded of is that of changing broker affiliation or moving an entire office. These changes must be filed in the Commission office within 10 days of transfer. Failure to do so can immediately result in a Stipulation and Assurance of Voluntary Compliance and payment of a \$50 penalty.

I wish you all a safe and enjoyable Memorial Day and leave you with a quote from Daniel Webster, "Although no sculptured marble should rise to their memory, nor engraved stone bear record of their deeds, yet will their remembrance be as lasting as the land they honored."

DjN

Real Estate News from Around the U.S.

(used with permission from ARELLO)

Virginia Permits Out-of-State Commercial Compensation, Limits Attorney Referral Fees

The General Assembly of the Commonwealth of Virginia has created a real estate license law exemption that will allow Virginia licensees to pay commissions to out-of-state licensees who bring buyers, tenants and others into Virginia commercial transactions. Another new law will limit the payment of referral fees to attorneys who are not also licensed real estate brokers or salespersons.

Wyoming Adds Designated Agency

According to the ARELLO® Digest of Real Estate License Laws and Current Issues, 2009 Edition, 63 percent of responding ARELLO® jurisdictions now have in place laws and/or regulations that permit the practice of "designated agency". One of the more recent examples is Wyoming's Senate Bill 110 which will take effect in the state on July 1, 2009.

S.B. 110 provides that, if a real estate brokerage firm has more than one licensee, the responsible broker and any licensee associated the responsible

broker may be designated as agents for different buyers or sellers in the same transaction. If the responsible broker is representing a buyer or a seller in an in-house transaction, the responsible broker shall immediately appoint a "transaction manager". A "transaction manager" is defined as a licensee designated in writing by the responsible broker to supervise a transaction. The transaction manager cannot serve as an agent in the transaction and has the duties of an [non-agency] "intermediary" while providing supervision. The simultaneous designation of licensees to work as agents for different parties does not constitute dual agency, a practice which is prohibited by the new law.

Under the provisions of S.B. 110, a responsible broker or transaction manager will have access to all necessary information but is prohibited from sharing the confidential information of any party that the broker or manager may learn in the process of supervising the licensees or the transaction.

Property Tax Reduction for Disabled Veterans Program

Veterans that have been rated as permanently and totally disabled as the result of a service connected disability may be eligible for up to \$100,000 of their property value to be exempt from property taxes.

For those eligible disabled veterans, the program exempts \$100,000 of the full and true value of the dwelling, or portion thereof, from property taxes.

After application is made and the property qualifies for the exemption, no further applications are needed. The property will continue to receive the \$100,000 exemption until the property is sold or there is a change in use.

"Dwelling" is defined as the house, manufactured home, or mobile home, and the lot upon which the structure is situated, or one acre, whichever is less. This also includes the garage, whether that structure is attached or unattached.

To be eligible for the exemption, the following criteria must be met:

- The property must be owned and occupied by a disabled veteran.
- The property must be classified as owner occupied.
- The veteran must be rated as permanently and totally disabled as the result of a service-connected disability.

For more information on this program, contact your local Veterans Service Officer, your county Director of Equalization, or the South Dakota Department of Revenue & Regulation, Division of Property and Special Taxes in Pierre. Information is available on the Dept. of Revenue website at: <http://www.state.sd.us/drr2/prospectax/prerty/home.htm>

SDREC Welcomes New Legal Counsel

Riter, Rogers, Wattier & Northrup, LLC of Pierre has been selected by the Commission as its new legal counsel. Lindsey Riter-Rapp and Robert Riter, Jr. will both serve in representing the SDREC. The firm has a wide and varied practice of law throughout the state and particularly in central South Dakota. Sitting just blocks from the state capitol, members of the firm are extensively involved in lobbying activities for numerous state and national clients during the legislative sessions and representing them before administrative agencies throughout the year.

Lindsey Riter-Rapp joined the firm in January of 2008. Lindsey spent the 5 years prior thereto as an attorney at the Public Defender's Office in Rapid City, South Dakota primarily doing criminal defense work. Prior to that, Lindsey also served as a law clerk for the Seventh Judicial Circuit.

Lindsey received a B.A. in English from the University of Nebraska in 1999 and her Juris Doctorate Degree from the University of South Dakota in 2002.

Riter-Rapp is a member of the State Bar of South Dakota and the American Bar Association. She is admitted to practice in the State Court and the Federal District Court for the State of South

Dakota. Her practice areas include litigation and trial work, including both civil and criminal defense, family law, administrative law and lobbying.

Bob Riter joined the firm in 1973. His legal efforts are focused principally upon litigation and trial work in all courts in this state, with a concentration in the defense practice. He also spends significant time appearing before state administrative bodies, and engaging in lobbying and legislative work.

Professional memberships include: State Bar of South Dakota (Association President and Past Chair of Ethics Committee, Administrative Law Committee and Continuing Legal Education Committee); Defense Research Institute (DRI) (State Representative, 1994-1999 Member, Board of Directors, 1999-2003); South Dakota Defense Lawyers Association (Past President 1994-1995); Fellow, American Bar Foundation; American Board of Trial Advocates; American College of Trial Lawyers.

Bob has lectured and given presentations before Insurance law classes at the University of South Dakota, School of Law, Continuing Education programs of the South Dakota State Bar, and Defense Research Institute (DRI) gatherings. He has also authored law review articles on the patient/physician privilege and civil justice reform.

Bob received his law degree from the University of South Dakota in 1973. He holds a Bachelor of Science degree with emphasis on economics from the University of South Dakota School of Business received in 1970.

Welcome Lindsey and Bob!

Business Corporations and Limited Liability Companies Need to be Registered with the Commission

Personal business corporations or limited liability companies set up for the sole purpose of collecting commissions

MUST be registered with the SDREC office.

If the commission checks are made out to a business entity and not to an individual person, that entity needs to be registered.

The "Registration for Corporation/LLC Formed for the Sole Purpose of Collecting Real Estate Commissions" form is available on the SDREC website under "License Applications".

4200 copies of this publication were printed by the SD Real Estate Commission at a cost of .26 per copy

South Dakota Real Estate VIEW

Official Publication of the
South Dakota Real Estate Commission
221 West Capitol, Suite 101
Pierre, South Dakota 57501

Telephone: 605-773-3600

Facsimile: 605-773-4356

Website: www.state.sd.us/sdrec

E-mail: drr.realestate@state.sd.us

Editor-in-Chief: Dee Jones Noordermeer
Editor: Karen Callahan

THE COMMISSION AND STAFF

Eileen Fischer, Chairperson Pierre
Dennis Eisnach, Vice-Chair Pierre
Brian Jackson, Member Sioux Falls
Paula Lewis, Member Rapid City
Charlie Larkin, Member Watertown
Dee Jones Noordermeer,

Executive Director Pierre
Karen Callahan, Education Pierre
Norma Schilling, Licensing Pierre
Michelle Metzinger, Compliance
..... Pierre
Angela Hagen, Compliance
..... Sioux Falls

Articles by outside experts express the author's particular viewpoints. These opinions are not necessarily shared by the Commission, nor should they be mistaken for official policy. The articles are included because they may be of interest to the readers.

Continuing Education Corner

By Karen Callahan, Education Director

It is an exciting time for real estate education in South Dakota! As mentioned on the front page of this edition of the Real Estate View, new education requirements will take effect on July 1st. While the increase in prelicensing education and the addition of postlicensing education will affect only brand new broker associates, these changes coincide with several additions to the overall real estate education program. The SDREC is currently developing an education program manual which will provide educators and course sponsors with practical guidelines on prelicensing curriculum and postlicensing/continuing education course content. Plus, all of the requirements for education course approval will be detailed in a user-friendly format.

The education information posted on the SDREC website will be reorganized to provide licensees with a clearer direction of what is required for license renewal. New licensees will receive a letter following the issue of their licenses explaining the education requirements and providing resources for continuing education.

Finally, the Real Estate License Law Book, or "the blue book" as it is commonly referred to will receive a much needed addition – an index! This will enable licensees to easily look up a given topic to see what statutes and administrative rules relate to that topic. A new version of the book containing the index plus all of the updated laws and administrative rules will be available July 1, 2009.

Please note the dates for the Fall Caravan on the front page of this newsletter. Course details are still being finalized, but this fall's topics will be agency and short sales.

New Twist on Mortgage Fraud - MN Woman Charged with \$230,000 Embezzlement

Licensed real estate closer used proceeds from closing to pay her own debts

The Minnesota Department of Commerce has summarily suspended the real estate closing license, resident insurance producer license and notary public commission of Kuntée Singramdoo and charged her with embezzling over \$230,000 in real estate closing proceeds and using the money to pay off her own creditors or her family members' creditors.

Singramdoo, of Lakeville, was an independent closer hired by Walsh Title & Real Estate Services, Inc. where she provided real estate closing services, sold title insurance policies and notarized real estate documents. The Commerce Department complaint alleges that Singramdoo engaged in a pattern of misappropriating, converting and/or embezzling settlement proceeds by issuing Walsh Title checks for her own benefit or for the benefit of her family members.

The alleged embezzlement includes at least 184 checks issued between February 2004 and June 2007 to 24 different creditors including \$68,109 to US Bank, \$48,863 to Wells Fargo, \$800 to JC Penney, \$4,764 to Macy's, \$6,286 to Goodman Jewelers, \$800 to Bloomingdale's, \$6,866 to Honda, \$2,734 to American Express and \$2,323 to Discover.

Singramdoo admitted under questioning from Commerce Department investigators that she embezzled the funds but that this time has only paid back \$10,000 to Walsh Title.

Singramdoo accomplished the embezzlement by entering her own creditors on the HUD-1 mortgage loan

form as if the debts belonged to the buyer or seller and subsequently issued checks directly to the creditors in her name. She also changed HUD-1 mortgage loan documents after closings to reflect the fraudulent payments.

"This brazen embezzlement scheme is a warning to everyone to pay close attention to the loan documents you are signing during the closing of a mortgage," said Glenn Wilson, Commissioner of the Minnesota Dept. of Commerce.

Recent Court Decision

The following case report is from the Association of Real Estate License Law Officials (ARELLO) Case Law Report

Right of First Refusal is Assignable

Jones v. Stahr, 746 N.W.2d 394 (2008) Court of Appeals of Nebraska

Facts: Theresa Dorenbach entered into an agreement with Daniel and Georgia Stahr for the sale of Dorenbach's real property. Under the agreement, the Stahrs were to purchase a certain parcel and were thereafter granted a right of first refusal on other land owned by the seller. The parties closed on said parcel and several years later the seller listed her remaining land with a real estate broker. The broker sent the Stahrs notice of the property listing and informed them that they would be given 24 hours to match or exceed any offer made on the property. A few weeks later, Wesley Jones submitted an offer and the seller accepted. The Stahrs were notified of the offer and they responded by timely delivering a purchase agreement to the seller stating that they wished to purchase the property for the same price as Jones' offer. The Stahrs inserted language into the purchase agreement expressly reserving their right to assign the contract to a third party prior to closing. The seller's attorney informed the Stahrs that their offer was not acceptable because it provided the Stahrs with the right to assign the contract to a third party. The trial court found that the right of first refusal granted to the Stahrs was personal and could not be assigned. The Stahrs appealed.



Calendar of Events

May 25	SDREC Office Closed – Memorial Day
June 15-16	Commission Mtg., Pierre
August 12-13	Commission Mtg., Pierre

Issue: Can a party who exercises its right of first refusal assign its purchase contract to a third party?

Held: Reversed. Once the seller decided to sell and found Jones' offer acceptable, the Stahrs' right of first refusal ripened into an option contract and as such, was assignable by the Stahrs.

Discipline in Two Jurisdictions Does Not Constitute "Double Jeopardy"

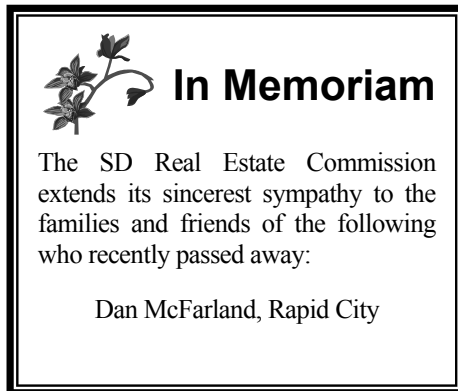
Clark v. Tyrrell, 750 N.W.2d 364 (2008) Court of Appeals of Nebraska

Facts: David Clark is a real estate agent licensed only in Nebraska, who was affiliated with John C. Clark, a broker licensed in both Nebraska and Iowa. David Clark was called upon by clients to show a property in Carter Lake, Iowa. After he realized the house was located in Iowa and he was not licensed to show it or act as a buyer's agent, he and the broker agreed that the broker would be the essential Realtor of record. The agent met the buyers at the property and assisted them in completing an offer form. The broker later signed the form as a witness and agent. The agent then proceeded to communicate the offer and counteroffers between the buyer and seller and to perform the remaining closing tasks as the buyer's agent. In July 2005, the Nebraska Real Estate Commission initiated proceedings against the broker alleging that he had violated NEB. REV. STAT ' 81-885.24 (Reissue 2003) (setting forth causes for licensee disciplinary action) by permitting or facilitating the agent, unlicensed in Iowa, in representing a buyer in Iowa. The broker argued that because he had already been disciplined in Iowa, disciplining him in Nebraska constituted double jeopardy. Upon a hearing, the Commission determined that the broker demonstrated unworthiness to act as a broker in violation of ' 81-885.24(29). The Commission ordered the broker's license suspended for 2 years, with all but 60 days to be served on probation, and mandated that, within one year, the broker complete additional continuing education requirements. The broker appealed the Commission's decision and the district court affirmed, finding that the broker's wrongdoing was more than simple failure to supervise the

agent, that the broker knowingly aided the agent in violating licensing regulations, and that the broker's actions evidenced blatant disregard for the rules of his profession and clearly demonstrated unworthiness to act as a broker. The broker appealed.

Issue: Did discipline imposed by the real estate commissions of two separate sovereign entities, Nebraska and Iowa, for the same act, violate double jeopardy?

Held: Affirmed. Discipline imposed by the real estate commissions of two separate sovereign entities, Nebraska and Iowa, for the same act, did not violate double jeopardy.



New Licensees

Auctioneer

Westra, Joel A - Chancellor

Broker

Clark, Lary J – Mondamin, IA
Cohn, Jonathan M – Sioux Falls
James, Curtis E – Saratoga, WY
Johnson, Marc C – Fargo, ND
Johnson, Russell L – Hayden, ID
Menke, Byron L – Council Bluffs, IA
Moore Jr., William H – McDonough, GA
O Neal, Kaye L – Crofton, NE
Sims, Michael G – Wayzata, MN
Uhre, Judson D – Scottsdale, AZ

Broker Associates:

Baloun, Kathleen "CamMay" – Sioux Falls
Beckler, David W – Bath
Benson, Bradley D – Madison
Breske, Calvin T – Sioux Falls
Day, Brian E – Watertown
Frohling, Joel – Groton

Hayden, Larry – Sioux Falls
Holte, Lacy J – Watertown
Johnson, Eric A – Sioux Falls
Kaye-Varland, Angi G – Lead
Keyser, Lonnie R – Belle Fourche
Koedam, Amy J – Sioux Falls
Maloney, Michelle M – Vermillion
Nienkerk, Kellie K – Brandon
Norgaard, Lindsay M – Brookings
Nutter, Timothy H – Rapid City
Quissell, Jon D – Tea
Smith, Kendall S - Pierre
Sutton, Daniel D – Flandreau
Westra, Joel A – Chancellor
Whitcalf, Coy – Rapid City
Wyatt, Brandi L – Vermillion

Property Manager

Garfield, Tina R – Rapid City
Hanzlik, Denise – Dell Rapids

Home Inspector

Wettlaufer, Jeffrey C – Sioux Falls
Wildeman, Jude T – Rapid City

Residential Rental Agent

Breitag, Ann L – Vermillion
Hall, Jessica R – Vermillion
Heiden, Tracey L – Sioux Falls
Heiman, Susan – Dell Rapids
Linke, Summer R – Sioux Falls
Long, LaQuita – Sioux Falls
Sehr, Tabitha A – Valley Springs
Shantz, Kandi L – Sioux Falls

Salesperson

Cunningham, William P – Pipestone, MN
Holloway, Katherine N – Dakota City, NE
Jenkins, Victoria – Sioux City, IA
Roetman, Michael R – Sioux Center, IA
Schenkelberg, Chris – Sioux City, IA

Timeshare Agent

Tubbs, Amber C - Oral



APPRAISER UPDATE

This section of the South Dakota Real Estate Review is the responsibility of the South Dakota Department of Revenue and Regulation Appraiser Certification Program. Articles are printed here to communicate pertinent information to those appraisers who receive this newsletter and are licensed under the Certification Program. Appraiser certification inquiries can be directed to Sherry Bren, Program Administrator, 445 E. Capitol, Pierre, SD 57501, 605-773-4608.

**Sherry Bren, Executive
Director
(605) 773-4608
445 E. Capitol
Pierre, SD 57501**

Appraiser Certification Program Mission – Purpose – Intent

The Appraiser Certification Program was implemented July 1, 1990, pursuant to enactment of Title XI of the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) by Congress. The mission of the Program is to certify, license and register appraisers to perform real estate appraisals in the state of South Dakota pursuant to Title XI (FIRREA). The purpose of the Program is to examine candidates, issue certificates, investigate and administer disciplinary actions to persons in violation of the rules, statutes and uniform standards, and approve qualifying and continuing education courses. Title XI intends that States supervise all of the activities and practices of persons who are certified or licensed to perform real estate appraisals through effective regulation, supervision and discipline to assure their professional competence.

Appraiser Certification Program Advisory Council

Council members provide recommendations to the Secretary of the Department of Revenue and Regulation in the areas of program administration in order to sustain a program that is consistent with Title XI. The Council meets quarterly in public forum. See the Website for meeting information. www.state.sd.us/appraisers

NOTICE Earn an Associate Degree for Certified Residential Appraiser ONLINE

Completion of the Mesa Community College Associate in Applied Science (AAS) for Certified Residential Appraiser prepares students for the appraisal of residential land and real property. Licensed Real Estate appraisal students completing the AAS for Certified Residential Appraiser will have met the necessary appraiser education and general education (associate degree) requirements for the South Dakota State-Certified Residential Appraiser classification.

The Department of Revenue and Regulation has approved the appraiser education offered by Mesa Community College consisting of 200 hours of creditable hours of approved qualifying education. Mesa Community College is an accredited community college meeting the criteria established by the Appraiser Qualifications Board for acceptance of the Associate degree offered by the College.

The courses are offered online. Students may complete the entire program or may complete courses to meet individual education needs in order to achieve the State-Certified Residential classification in South Dakota.

For information regarding the Mesa Community College qualifying education and Associate in Applied Science in Certified Residential Appraiser degree program, please contact:

John Beshk, Business Faculty
Mesa Community College
1833 West Southern Avenue
Mesa, Arizona 85202
Telephone – 480.461.7715
Facsimile – 480.926.7308

E-mail – Johnnyb@mesacc.edu
Website – www.mc.mariopa.edu

You may also contact Sherry Bren,
Appraiser Certification Program at
605.773.4608 or e-mail
Sherry.Bren@state.sd.us.

New Licensees – February - April 2009

Jason D. Woods, State-Certified
General – Sioux City, IA
Kenneth Brilz, State-Licensed –
Pierre, SD
Thomas L. Grube, State-Certified
Residential – Hartington, NE
Gregg E. Neu, State-Registered – Big
Stone City, SD
Lindsey Willis, State-Registered –
Sheridan, WY
William O. Mulligan, State-Certified
General – Valentine, NE
Troy R. Quicke, State-Registered –
Hot Springs, SD
Lyle J. Regennitter, State-Certified
General – North Platte, NE
Jay S. Stillwell, State-Certified
General – Breckenridge, MN

Upgrades – March/April 2009

Troy Trankle, State-Licensed
Brian Field, State-Certified General

Information Regarding Disciplinary Actions

Public information regarding disciplinary action taken against an appraiser is available upon written request to the Department of Revenue and Regulation, Appraiser Certification Program, 445 East Capitol Avenue, Pierre, SD 57501 or e-mail –

Sherry.Bren@state.sd.us. Include in the request for information the name of the appraiser and the appraiser's city and state of residence. (Disciplinary action may include denial, suspension, censure, reprimand, or revocation of a certificate by the department. (ARSD 20:14:11:03))

Anonymous Complaints

ARSD 20:14:11:01.01. Anonymous complaints. Initiation of an investigation may be commenced upon receipt of an anonymous complaint if it meets the following criteria:

(1) The allegations of violations of any provision of this article are considered credible and based upon factual information which is independently verifiable; and

(2) The complaint is accompanied by a copy of the appraisal report or other documents which contain clearly identifiable errors or violations of the provisions of this article.

Review of Cases – 1/1/09 through 5/4/09

For the period 01/01/2009 through 05/04/2009, the Department received 1 upgrade application and initiated 9 complaint investigations.

Upgrades – 1 issued.
Complaints – 9 pending.

Training Course for Supervising Appraisers And State-Registered Appraisers

Pursuant to the Department of Revenue and Regulation, Appraiser Certification Program administrative rules regarding appraisers the supervising appraiser and the state-registered appraiser are required to successfully complete the Training Course for Supervising Appraisers and State-Registered Appraisers either before supervision begins, or within 90 days after such supervision begins. If the supervisor

does not complete the department's education program within the 90 days after the supervision begins, the supervisor may no longer supervise the state-registered appraiser until the class is completed. If the state-registered appraiser does not complete the department's education program within 90 days after the supervision begins, the state-registered appraiser may no longer work under the supervision of the supervisor until the class is completed. An extension may be granted to complete the Course by the secretary upon written request. [ARSD 20:14:04:12.02(2) and ARSD 20:14:04:14(4)]

NEXT COURSE OFFERING:

**Department of Revenue and Regulation
Anderson Building
Garden Level Conference Room
Pierre, South Dakota
August 20, 2009, 1:00 p.m.**

For further information and registration contact the Professional Appraisers Association of South Dakota (PAASD). (Telephone: 605.716.9011 or Website at www.paasd.com)

[Note: The Department of Revenue and Regulation Training Course for Supervising Appraisers and State-Registered Appraisers is the only acceptable course to meet the education program requirements for South Dakota licensees (supervisors and state-registered appraisers.)]

USPAP Q & A

Vol. 11, No. 3, March 2009

The impact of Different Clients on Assignment Results with Otherwise Identical Assignment Elements and Scope of Work

Question: Assuming otherwise identical assignment elements and scope of work, will an appraiser's value opinion for an assignment be the same regardless of the appraiser's client?

Examples: Assuming otherwise identical assignment elements and scope of work, will an appraiser's value opinion for an eminent domain assignment be the same regardless of whether the assignment is for the condemnee or the condemnor?

In a litigation assignment with otherwise identical assignment elements and scope of work, will the appraiser's value opinion be the same regardless of whether

the appraiser was hired by the defendant or the plaintiff or a third-party?

In an appraisal prepared for a tax assessment appeal with otherwise identical assignment elements and scope of work, will the appraiser's value opinion be the same regardless of whether the appraiser was hired by the government or the taxpayer?

In an appraisal prepared for a gift donation for tax filing purposes with otherwise identical assignment elements and scope of work, will the appraiser's value opinion be the same regardless of whether the appraiser was hired by the IRS or the taxpayer?

Assuming otherwise identical assignment elements and scope of work, will an appraiser's value opinion be the same independent of the client and other intended user(s)?

Does the Certification on the Uniform Residential Appraisal Report (URAR) Form Also Extend to the Market Conditions Addendum?

Question: When I complete the new Market Conditions form (such as the Fannie Mae 1004MC) and include it within my report, does the certification contained in the URAR form apply to the Market Conditions form as well?

Vol. 11, No. 4, April 2009

QUESTIONS REGARDING 2010-11 REVISIONS TO THE ETHICS RULE

The Appraisal Standards Board recently adopted changes to the Conduct section of the ETHICS RULE that will become effective January 1, 2010 for the 2010-11 edition of USPAP. The specific language that has been adopted, and which has initiated questions and concerns is:

If known prior to accepting an assignment, and/or if discovered at any time during the assignment, an appraiser must disclose to the client, and the subsequent report certification:

- Any current or prospective interest in the subject property or parties involved; and

- Any services regarding the subject property performed by the appraiser within the three year period immediately preceding acceptance of the assignment, as an appraiser or in any other capacity.

Comment: Disclosing the fact that the appraiser has previously appraised the property is permitted except in the case when an appraiser has agreed with the client

to keep the mere occurrence of a prior assignment confidential. If an appraiser has agreed with a client not to disclose that he or she has appraised a property, the appraiser must decline all subsequent assignments that fall within the three year period.

The goal of maintaining public trust makes it important that the client have knowledge regarding an appraiser's prior services associated with the subject property in advance of engaging that appraiser.

The ASB has compiled the following list of questions and answers:

Question 1: I heard about the changes to the Conduct section of the ETHICS RULE and I am concerned. Is it true that I will not be able to reappraise a property for three years after a prior appraisal?

Question 2: I occasionally receive requests to appraise a property that I have appraised in the past. With the changes to the ETHICS RULE, I will be required to disclose any assignments that I performed within the three years prior to the date of acceptance of the assignment. Is such a disclosure not a violation of an appraiser's responsibility under the Confidentiality section of the ETHICS RULE?

Question 3: I am concerned that when I tell a prospective client that I have previously provided a service related to a

property, it will lead to questions that I cannot answer without violating the Confidentiality section of the ETHICS RULE. I am sure the new client will want to know when I appraised it, and what my value conclusion had been. How can I address these questions and comply with USPAP?

Question 4: Some of my best clients require me to keep all information regarding any assignments that I perform for them confidential. The Comment states in part, "If an appraiser has agreed with a client not to disclose that he or she has appraised a property, the appraiser must decline all subsequent assignments that fall with the three year period." Will this prevent me from appraising a property for a different client during that three year period?

Question 5: Most of my assignments are completed using common residential appraisal report forms. I am concerned that my clients will not allow changes to the certification on the report forms. The Conduct section of the ETHICS RULE requires that I disclose prior services regarding the subject property in the certification. Does this mean that I will not be allowed to appraise a property for these clients if I had performed a service

regarding that property in the previous three years?

Question 6: The Conduct section of the ETHICS RULE requires that I disclose prior services regarding the subject property provided within the three years prior to acceptance of an assignment. I am appraising a residential property on which I acted as the general contractor when it was built four years ago. Since this service was more than three years ago, am I correct in not disclosing that to a new client?

Question 7: If the firm that employs me as an appraiser has provided leasing or property management services in the past three years for the subject property, must this be disclosed?

Question 8: If I will be conducting an auction of the subject property after the appraisal, does this have to be disclosed?

Question 9: May the disclosure that must be made at the time of acceptance be oral? May it be made in an email to the client?

Answers to the above questions can be found at: www.appraisalfoundation.org.

[For further information regarding USPAP Q&As contact The Appraisal Foundation at: www.appraisalfoundation.org